
United States
Circuit Court of Appeals
For the Ninth Circuit.

H. C. STRONG,

Appellant,

vs.

C. A. HOLMES,

Appellee.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
"ALKI."

Apostles on Appeal.

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

Filed

SEP 24 1915

F. D. Monkfort,

Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

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VS.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

IN ADMIRALTY—No. 1214—A.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
“ALKI.”

Messrs. SHACKLEFORD and BAYLESS, Juneau,
Alaska,

Messrs. BRONSON, ROBINSON and JONES,
Seattle, Washington.

Proctors for Libelant and Petitioner.

V. A. PAINE, Juneau, Alaska,

Proctor for Claimant C. A. HOLMES.

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

IN ADMIRALTY—No. 1214—A.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
“ALKI.”

Petition and Libel.

To the Honorable Judge of the Above-entitled Court:

Comes now H. C. Strong, and in pursuance of the
laws and Statutes of the United States presents this,
his petition and libel, in a proceeding to limit his
liability in respect to certain claims made against
him as the owner of the Steamship “Alki,” and
herewith alleges as follows:

I.

That during all of the year 1912, the legal title to the said steamship "Alki" stood in the name of your libelant and petitioner. That your petition is and was at all times herein mentioned a citizen of
J. T. R. the United States and a resident of Ketchi-
D. C. kan, Alaska.
6-26-15

II.

That on, to wit, the 26th day of March, 1912, the said steamship "Alki" left Seattle, Washington, on a voyage to Juneau, Alaska, which said voyage was completed on April 3d, 1912.

III.

That during the said voyage at Ketchikan, Alaska, on, to wit, the 31st day of March, 1912, some piles of lumber in the 'tween decks of said steamship toppled over.

IV.

That the falling of said lumber was not due to any negligence of your libelant and petitioner and was not occasioned by any cause whatever within his privity or knowledge.

V.

That notwithstanding these facts claims for damage have been made against your libelant and petitioner as the result of the [1*] said fall of lumber; and other claims may be still made; that one C. A. Holmes in particular has made a claim in the sum of twenty-one thousand two hundred and fifty dollars; and has in the Superior Court of King

*Page-number appearing at foot of page of certified Apostles on Appeal.

county, State of Washington, secured a judgment on said claim; and in the further prosecution of said claim has secured a judgment in this court sitting at Juneau, Alaska, upon the said judgment so rendered in the State of Washington, the judgment in Alaska

J. T. R. having been entered on the 27th day of
D. C. October, 1914, in cause Numbered 1130-A;
6-26-15 said cause being entitled, C. A. Holmes vs. H. G. Strong; and your petitioner further alleges that the said C. A. Holmes and his attorneys are threatening to issue immediate execution upon the said Alaska judgment.

VI.

That your libelant and petitioner claims entire exemption from the said claim; and in the alternative alleges that in any event he is not liable in excess of the amount or value of his real and beneficial interest in the said steamship "Alki," which interest he alleges to have been, on, to wit, March 31, 1912, merely nominal and far less than the amount of the said claim of the said C. A. Holmes.

VII.

That so far as your libelant and petitioner knows there are no lienable claims against the said steamship "Alki" as the result of said voyage, unless the claim of C. A. Holmes may be held to be such. That the address of said C. A. Holmes as far as it is known to your petitioner, is Seattle, Washington, and that his attorneys are Chauncey Baxter and C. Will Jones, 805 White Building, Seattle, Washington.

WHEREFORE, by reason of the matters and things hereinbefore set forth, and by virtue of Sec-

tions 4283, 4285, and 4289, of the Revised Statutes of the United States; and by virtue of the rules, laws and regulations of the United States applicable to the premises, your libelant and petitioner herewith offers to enter into stipulation for the value of his interest in the said "Alki" and her freight pending on said [2] voyage, when the amount of the said interest shall have been determined by appraisal according to the order of the Court, and to file said stipulation for value in the above-entitled cause and court to await the disposition of any and all claims that may be filed;

AND YOUR PETITIONER PRAYS that this Court will forthwith enter a temporary injunction forbidding the said C. A. Holmes, or his attorneys, from issuing execution or taking any steps to collect the said judgment entered in cause number 1130-A in this court on the said 27th day of October, 1914; and that this Court will order a commissioner of the United States or some other competent person or commissioner to make an appraisal of the interest of your petitioner in the said steamship "Alki" on the said 31st of March, 1912, at an appropriate time and place and will cause notice of said appraisal to be given to the said C. A. Holmes, or to Chauncey Baxter and C. Will Jones, his attorneys, at 805 White Building, Seattle, Washington;

AND YOUR PETITIONER FURTHER PRAYS That when said appraisal has been had, the Court will order your petitioner to enter into a stipulation for the said appraised value and to file the same in this court; and that thereupon this Court will con-

tinue the said temporary injunction against the said C. A. Holmes and will issue a further temporary injunction against all persons forbidding the bringing of new suits in the premises; and your petitioner further prays the Court to thereupon order the United States Commissioner of this District to receive proof of claims in the premises, and will cause a monition to be issued to all persons whomsoever claiming damages as the result of said fall of lumber, to appear before the Commissioner at or before a time therein named, to file their claims and answer under oath the allegations of this petition, if answer they have; upon the return of said commissioner your petitioner further prays this Honorable [3] Court to make a final decree exempting this petitioner from all liability, or limit his liability as the facts found by the commissioner and the law pertaining thereto may warrant; and therewith to issue a perpetual injunction enjoining all persons from prosecuting any action whatsoever in any court or courts whatsoever to recover upon any claims as the result of the said fall of the lumber hereinbefore referred to.

SHACKLEFORD & BAYLESS,
CHARLES E. INGERSOLL,
Proctors for Libelant and Petitioner.

United States of America,
District of Alaska,—ss.

H. C. Strong, being first duly sworn, on oath deposes and says: That he is the libelant and petitioner in the above-entitled proceedings; that he has read the foregoing petition and libel and that the matters

and things as therein stated are true, except as to such matters as are stated upon information and belief; and that as to those matters, he believes them to be true.

H. C. STRONG.

Subscribed and sworn to before me this 11th day of January, 1915.

[Notarial Seal]

W. S. BAYLESS,

Notary Public in and for the Territory of Alaska,
Residing at Juneau.

My commission expires Dec. 22, 1917.

Filed in the District Court, District of Alaska,
First Division. Jan. 25, 1915. J. W. Bell, Clerk.
By —————, Deputy. [4]

[Endorsements]: No. 1214-A. In the District Court for the District of Alaska, Division No. 1. In the Matter of the Petition of H. C. Strong to Limit His Liability for Certain Claims Made Against Him as Owner of the Steamship "Alki." In Admiralty. Shackleford & Bayless, Juneau, Alaska. [5]

*In the United States District Court, for the District
of Alaska, Division Number One, at Juneau.*

No. 1214-A.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
“ALKI.”

**Order [Directing That Notice be Given by Petitioner
re Limitation of Liability, etc.]**

This matter came on to be heard on the *ex parte* application of petitioner, petitioner being represented by W. S. Bayless, Esq. The Court being in doubt both as to its jurisdiction in the premises and as to the sufficiency of the allegations and the propriety of granting the relief asked for, and it being unwilling to decide said questions except upon a full presentation of the matter and an opportunity given to the claimant mentioned in said petition, to wit, C. A. Holmes, does now adjourn the hearing of the matters contained in the petition until Monday, the first day of March, 1915, at 10 o'clock A. M., and does direct that notice be given by the petitioner, to the said C. A. Holmes, or to his attorney in the action of C. A. Holmes vs. H. C. Strong (being No. 1130-A of the files of this court), that on said date and at the courthouse in Juneau, the said petition will be brought on for argument, both as to the jurisdiction of the Court, the sufficiency of the allegations of the petition, and the propriety of granting the relief asked for, at which said time and place, he, the said

C. A. Holmes, or his attorney, may appear and present such argument and authorities in opposition to the prayer of said petitioner as to him may seem desirable. [6] A copy of said petition shall be served with said notice.

Done in open court this 25th day of January, 1915.

ROBERT W. JENNINGS,

Judge.

Entered Court Journal No. K, page 136.

Filed in the District Court, District of Alaska, First Division. Jan. 27, 1915. J. W. Bell, Clerk.
By —————, Deputy.

[Endorsements]: No. 1130—A. In the United States District Court for the District of Alaska, Division No. One. C. A. Holmes, Plaintiff, vs. H. C. Strong, Defendant. Order. [7]

[Opinion.]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

IN ADMIRALTY—No. 1214—A.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
“ALKI.”

Paragraph I of the petition having been amended by adding the following words: “That your petitioner is and was at all times herein mentioned a citizen of the United States and a resident of Ketchikan, Alaska”; and paragraph V of the petition having been so amended that it shows that the judg-

ment recovered in this jurisdiction was a judgment on a judgment of the State of Washington, and the matter having been resubmitted to the Court for determination as to whether or not the Court can or should entertain jurisdiction hereof, the Court is of opinion that the petition as amended as aforesaid shows that this Court has no jurisdiction to entertain the same and that the proceedings should be brought in the jurisdiction where the Washington judgment was recovered.

The *Alpina*, 8 Fed. 285.

Judge Blodgett says—

“but the Court only intended to say that if the owner delayed such proceedings until a suit had been commenced, then he should commence such proceeding in the District Court where such suit was commenced.”

I am of opinion, therefore, that this Court cannot and ought not to exercise jurisdiction in the premises. Accordingly the petition is dismissed. Petitioner allowed 30 days in which to file Bill of Exceptions.

ROBERT W. JENNINGS,

Judge. [8]

Filed in the District Court, District of Alaska, First Division. Jul. 29, 1915. J. W. Bell, Clerk. By ————, Deputy.

[Endorsements]: In Admiralty—No. 1214—A. In the United States District Court for the District of Alaska, Division No. One. In the Matter of the Petition of H. C. Strong to Limit His Liability for

Certain Claims Made Against Him as Owner of the
Steamship "Alki." Memorandum Opinion. [9]

*In the United States District Court, for the District
of Alaska, Division Number One, at Juneau.*

No. 1214-A.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
"ALKI."

Notice of Appeal.

To C. A. Holmes, Claimant, and to Chauncey Baxter
and V. A. Paine, His Proctors:

You, and each of you, will please take notice that
H. C. Strong, the libelant and petitioner herein,
hereby appeals to the United States Circuit Court of
Appeals for the Ninth Circuit, from the Decree of
Dismissal entered herein on or about the 29th day of
July, 1915, and from each and every part thereof.

Dated this 27th day of August, A. D. 1915.

SHACKLEFORD & BAYLESS,

Juneau, Alaska.

BRONSON, ROBINSON & JONES,

Seattle, Washington,

Proctors for Petitioner and Libelant.

Service of the within notice of appeal, and receipt
of copy thereof admitted this 27th day of August,
1915.

V. A. PAINE,

Proctor for Claimant.

Filed in the District Court, District of Alaska,
First Division. Aug. 27, 1915. J. W. Bell, Clerk.
By ———, Deputy. [10]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1214-A.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
“ALKI.”

**Order Allowing Appeal [and Fixing Amount of
Bond].**

On motion of Messrs. Shackelford & Bayless, proc-
tors for the libelant and petitioner herein,

IT IS HEREBY ORDERED, That an appeal to
the United States Circuit Court of Appeals for the
Ninth Circuit from the decree and order of dismissal
heretofore made, rendered and entered herein be,
and the same is hereby, allowed.

IT IS FURTHER ORDERED, That the bond on
appeal herein be the sum of Five Hundred (\$500)
Dollars.

Done in open court this 27th day of August, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,
First Division. Aug. 27, 1915. J. W. Bell, Clerk.
By ———, Deputy. [11]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1214-A.

In the Matter of the Petition of H. C. STRONG to
Limit His Liability for Certain Claims Made
Against Him as Owner of the Steamship
“ALKI.”

Assignment of Errors.

H. C. Strong, libelant and petitioner in the above-entitled court and cause, assigns the following Errors committed by the trial court in the rendition and entry, on July 29, 1915, of the order dismissing the Libel and Petition herein upon which he will rely in the Circuit Court of Appeals for the Ninth Circuit, to wit:

I.

The Court erred in entering an order herein on July 29, 1915, refusing to exercise jurisdiction in the premises and dismissing the petition of libelant and petitioner for limitation of his liability, on the ground that the District Court for the District of Alaska, Division No. One, at Juneau, was without jurisdiction to entertain said petition.

II.

The Court erred in sustaining the oral objections of the claimant, C. A. Holmes, entering an order dismissing the petition and refusing to examine the matter on the merits.

WHEREFORE, the libelant and petitioner, appellant herein, prays that the order of dismissal of the

trial Court be reversed and that said Court be directed to entertain said petition and deal with the same according to the rules and practices in [12] such cases provided.

SHACKLEFORD & BAYLESS,
Juneau, Alaska.
BRONSON, ROBINSON & JONES,
Seattle, Washington.

Proctors for Libelant and Petitioner.

Service of the within assignment of errors and receipt of copy of same admitted this 27th day of August, 1915.

V. A. PAINE,
Proctor for Claimant, C. A. HOLMES.

Filed in the District Court, District of Alaska, First Division. Aug. 27, 1915. J. W. Bell, Clerk.
By —————, Deputy. [13]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1214—A.

In the Matter of the Petition of H. C. STRONG
to Limit his Liability for Certain Claims
made Against Him as Owner of the Steam-
ship "ALKI."

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, the undersigned libelant H. C. Strong of Ketchikan, Alaska, as principal and Henry Shattuck and Allen Shattuck of Juneau, Alaska, as sureties, are held and firmly bound unto the said claimant

C. A. Holmes, his heirs, executors, administrators and assigns in the full and just sum of Five Hundred (\$500) Dollars, to be paid to the said C. A. Holmes, his heirs, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated this 27th day of August, 1915.

WHEREAS, Lately at a session of the District Court for the District of Alaska, Division Number One, at Juneau, the libelant and petitioner, H. C. Strong, filed a petition in said court to limit his liability for certain claims made against him as the owner of the steamship "Alki," and particularly the claim made by one C. A. Holmes, which claim had been reduced to judgment, both in the courts of the State of Washington and the Territory of Alaska, Division Number One; and

WHEREAS, The said Court has refused to take jurisdiction of the said petition of H. C. Strong to limit his liability, and has, on the 29th day of July, 1915, made and entered an order finally dismissing said petition and libel of the libelant and [14] awarding costs against him; and,

WHEREAS, the libelant and petitioner has filed a notice of appeal herein from said order dismissing the said libel and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, to be hereafter held in the City of San Francisco, State of California, to reverse the

final order of the Court made and entered herein on the 29th day of July, 1915; and.

WHEREAS, Said appeal has been by this Court allowed;

NOW, THEREFORE, The condition of the above obligation is such that if the said libelant and petitioner shall prosecute the said appeal to effect and shall answer all damages and costs that may be awarded against him if he fails to make good his plea, then this obligation is to be void; otherwise to remain in full force and effect.

H. C. STRONG,

By W. S. BAYLESS,

His Proctor of Record,

HENRY SHATTUCK. (Seal.)

ALLEN SHATTUCK. (Seal.)

United States of America,

Territory of Alaska,—ss.

Henry Shattuck and Allen Shattuck, being first duly sworn, each for himself and not one for the other, on oath deposes and says: That I am a resident and householder in the Territory of Alaska, and am worth the sum of One Thousand (\$1,000) Dollars over and above all legal liabilities and exclusive of property [15] exempt from execution.

HENRY SHATTUCK.

ALLEN SHATTUCK.

Subscribed and sworn to before me this 27th day of August, 1915.

[Notarial Seal.]

R. C. HURLEY,

Notary Public for Alaska.

My commission expires Nov. 15, 1916.

Sufficiency of the sureties of the foregoing bond approved this 27th day of August, 1915.

ROBERT W. JENNINGS,
Judge.

Filed in the District Court, District of Alaska,
First Division. Aug. 27, 1915. J. W. Bell, Clerk.
By ————— Deputy. [16]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1214—A.

In the Matter of the Petition of H. C. STRONG
to Limit his Liability for Certain Claims
made Against Him as Owner of the Steam-
ship "ALKI."

Citation [on Appeal (Original).]

To C. A. Holmes, Claimant, and V. A. Paine and
Chauncey L. Baxter, His Proctors:

WHEREAS, The petitioner and libelant, H. C. Strong, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree and order of dismissal herein lately rendered in the District Court for the District of Alaska, Division No. One, at Juneau, dismissing the petition and libel of the libelant and awarding costs against the petitioner, and on said appeal has failed the security as required by law;

NOW, THEREFORE, you are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco and the State of

California, within thirty days from the date hereof, to do and receive what may pertain to justice to be done in the premises.

Given under my hand, at the City of Juneau, in the Territory of Alaska, on the 27th day of August, 1915, and of the independence of the United States the one hundred thirty-ninth.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 27th [17] day of August, 1915, and of the independence of the United States of America one hundred thirty-ninth.

ROBERT W. JENNINGS,
District Judge Presiding in the District Court for
the District of Alaska, Division Number One, at
Juneau.

[Seal] Attest: J. W. BELL,
Clerk of the District Court for the District of Alaska,
Division Number One, at Juneau.

Service of the within Citation and receipt of a
copy admitted this 27th day of August, 1915.

V. A. PAINE,
Of Proctors for Claimant.

Filed in the District Court, District of Alaska,
First Division. Aug. 27, 1915. J. W. Bell, Clerk.
By ————— Deputy. [18]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1214—A.

In the Matter of the Petition of H. C. STRONG
to Limit his Liability for Certain Claims
made Against Him as Owner of the Steam-
ship "ALKI."

Praeipe for Apostles on Appeal.

To J. W. Bell, Clerk of the Above-entitled Court:

Please prepare for the apostles on appeal herein
the following:

1. Petition and Libel.
2. Order of Court dated January 25, 1915.
3. Memorandum Decision of Court Dismissing Pe-
tition and Libel as amended, dated July 29,
1915.
4. Notice of Appeal.
5. Order Allowing Appeal.
6. Assignment of Errors.
7. Bond on Appeal.
8. Citation.
9. Praeipe.

Yours truly,

SHACKLEFORD & BAYLESS,
BRONSON, ROBINSON & JONES,
Proctors for Libelant and Petitioner.

Filed in the District Court, District of Alaska,
First Division. Aug. 27, 1915. J. W. Bell, Clerk.
By ————— Deputy. [19]

**[Certificate of Clerk U. S. District Court to Apostles
on Appeal.]**

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

United States of America,
District of Alaska, Division No. 1,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached nineteen pages of typewritten matter, numbered from 1 to 19, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record, prepared in accordance with the praecipe of proctors for libellant and petitioner, on file in my office and made a part hereof; in cause No. 1214-A, In the Matter of the Petition of H. C. Strong to limit his liability for certain claims made against him as owner of the steamship "Alki."

I further certify that the said record is by virtue of a Citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this apostle was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Seven and 35/100 Dollars (\$7.35), has been paid to me by Messrs. Shackleford and Bayless, Proctors for Libellant and Petitioner.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled Court this 27th day of August, 1915.

[Seal]

J. W. BELL,
Clerk,

By _____,
Deputy.

[Endorsed]: No. 2648. United States Circuit Court of Appeals for the Ninth Circuit. H. C. Strong, Appellant, vs. C. A. Holmes, Appellee. In the Matter of the Petition of H. C. Strong to Limit His Liability for Certain Claims Made Against Him as Owner of the Steamship "Alki." Apostles on Appeal. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed September 4, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.